

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 524 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements?No

2. To be referred to the Reporter or not?

No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

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STATE OF GUJARAT

Versus

ASHOKKUMAR GOPALDAS SHAH  
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Appearance:

Mr.L.R.Pujari, APP, for the appellant

Mr. P.B. Bhatt for respondent No.1

Mr. J.B.Patel for respondent No.2  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 10/10/97

ORAL JUDGEMENT

By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has challenged the legality and validity of judgment and order dated March 7, 1988, rendered by the learned Judicial Magistrate (First Class), Borsad, in Criminal Case No.1901 of 1986, whereby the respondent-original accused was acquitted from the charges framed against him, for the offences punishable under Sections 2(ia) (a)(b)(c)(m) and Section 7(i)(v) and also Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 ('Act' for short).

Complainant, Mr. Yogeshchandra Madhusudan Soni, who was working as Food Inspector in the local area of Taluka Borsad, inspected grocery shop of the respondent, which is situated at village Asodar, Taluka Borsad, on November 28, 1985. Food Inspector, Mr.Soni, in presence

of panchas, drew samples of ground-nut oil from the shop of the respondent-accused in the quantity of 375 grams, and filled the sample in three bottles, each weighing 125 grams. The Food Inspector paid Rs.6.40 ps for price of the said sample of ground-nut oil. Out of three bottles of samples, one bottle was sent to the public analyst. Other two bottles were sent to the local health authority along with the memorandum as prescribed under the Rules. According to the report of the public analyst, ground-nut oil was adulterated, as it contained castor oil. The Food Inspector, after obtaining consent of the local health authority, filed complaint in the court of the learned Judicial Magistrate, First Class, at Borsad, which was registered as Criminal Case No.1901 of 1986. To prove its case, the prosecution examined complainant, Food Inspector, Mr. Y.N. Soni, at Exh.31. The prosecution has also examined panch witness Natubhai Samsinh, at Exh.55. After examining the above two witnesses, the charge came to be framed against the respondent-accused for the offences punishable under Sections 2(ia) (a)(b)(c)(m) and Section 7(i)(v) and also Section 16(1)(a)(i) of the Act. The charge was read over and explained to the respondent. The respondent did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution led oral as well documentary evidence against the respondent to substantiate the charge. After recording of evidence of prosecution witnesses was over, further statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the respondent denied the case of the prosecution.

On appreciation of the evidence led by the prosecution, the learned Judicial Magistrate, by his judgment and order dated March 7, 1988, came to the conclusion that the Food Inspector had not drawn sample as per the mandatory provisions of Rule 14 of the Prevention of Food Adultration Rules, 1955 ("Rules" for short). The learned Judicial Magistrate has also concluded that sanction of the local health authority was not obtained as per the mandatory requirement of Section 20 of the Act. On the basis of the abovereferred conclusion, the learned Judicial Magistrate acquitted the respondent by the impugned judgment, giving rise to the present appeal.

Mr. L.R.Pujari, learned Additional Public Prosecutor, has taken me through the evidence of the prosecution. The learned APP submitted that the learned Judicial Magistrate has erred in not appreciating the evidence of Food Inspector, Mr.Soni, who had deposed that

he had drawn sample as per the mandatory procedure prescribed under the Rules. It is also submitted by the learned APP that the Food Inspector had collected samples in presence of the panchas and had sent sample to the public analyst on the very next working day. It is further submitted by the learned APP that the conclusion of the learned Judicial Magistrate that no valid consent was obtained from the local authority, is perverse and requires to be set aside.

Learned advocate, Mr. P.B. Bhatt, for the respondent-accused, has submitted that the Food Inspector had not collected sample in clean dry bottles as per the mandatory provision of Rule 14; that, the Food Inspector had drawn sample from from the open tin with the help of pail, which was also used by the respondent-accused for drawing castor oil; that, the said pail was not cleaned before drawing sample of ground-nut oil.

Submission of learned Additional Public Prosecutor that Food Inspector, Mr. Soni, had drawn sample as per the provisions of Rule 14, is devoid of merit and is required to be rejected. The evidence of Food Inspector, Mr. Soni, recorded at Exh.31, clearly shows that, he had not taken precaution of cleaning bottles and making it dry, before filling it with the samples of ground nut oil. The pail, with which the sample of ground-nut oil was drawn, was also not clean. Therefore, in my opinion, the Food Inspector has not followed mandatory provision of Rule 14 with regard to drawing of sample, which has caused serious prejudice to the respondent-accused. In view of breach of mandatory provision of Rule 14, the finding of the learned Judicial Magistrate that the Food Inspector, Mr. Soni, had not drawn sample as per the prescribed mandatory provisions, is required to be confirmed.

This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor has failed to

dislodge the reasons given by the learned judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

(swamy)

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